**CONFIDENTIALITY AGREEMENT**

**This agreement** is made the day of 2023

**Between:**

#### **THE WELLCOME TRUST LIMITED**, a company registered in England and Wales (no. 2711000), as trustee of the Wellcome Trust, a charity registered in England and Wales (no. 210183), whose registered office is at 215 Euston Road, London NW1 2BE, UK (**Wellcome**); and

#### **[FULL COMPANY NAME]**, a company registered in [COUNTRY] (no. [COMPANY NUMBER]), whose registered office is at [REGISTERED OFFICE ADDRESS] (the **‘Recipient’**).

separately a **Party** and together the **Parties**.

**Background**

1. Wellcome wishes to disclose certain information (the **Confidential Information**) to the Recipient as part of a tender that the Recipient is participating in, to procure secretariat services for a funders group that funds Europe PMC (the **Business Purpose**).

Agreed terms

## In consideration of Wellcome disclosing the Confidential Information to the Recipient, the Recipient agrees to be bound by, and comply with, the terms and conditions set out in this Agreement.

# Definitions

## In this Agreement, unless the context indicates otherwise:

## **Business Day** means a day other than a Saturday, Sunday or public holiday in England when banks in London are closed for business, excluding days nominated by Wellcome on reasonable notice for planned closure of its offices.

## **Confidential Information** means all information (whether commercial, financial, technical or otherwise and however recorded, or preserved) that by its nature may reasonably be regarded as confidential or which is marked or designated, either expressly or by necessary implication as confidential and that is disclosed to the Recipient in connection with the Business Purpose. In addition, the existence of this Agreement and any involvement of either Party in the Business Purpose shall be Confidential Information.

## **Term** means the period commencing on the date this Agreement is validly executed by the Parties and ending on the date on which the Recipient has discharged its obligations under this Agreement or on earlier termination of the Agreement pursuant to Clause 6.1.

# Confidentiality Obligations

## The Recipient acknowledges that the Confidential Information is of a proprietary and confidential nature and the Recipient undertakes:

### to keep the Confidential Information confidential;

### not to use or exploit the Confidential Information in any way except for the Business Purpose;

### not to disclose the Confidential Information to any third party without the prior written consent of Wellcome;

### to notify Wellcome promptly of any unauthorised use, copying or disclosure of the Confidential Information of which the Recipient becomes aware and to provide all reasonable assistance to Wellcome to terminate such unauthorised use and/or disclosure.

# Exceptions

## The obligations of confidentiality in Clause 2 shall not apply where the Confidential Information:

### is or has come into the public domain through no fault of the Recipient, its employees, agents or sub-contractors; or

### is lawfully received from an independent third party without any restriction and without any obligation of confidentiality; or

### is independently developed by the Recipient without access to, or knowledge of, or use of, the Confidential Information.

## The Recipient may disclose the Confidential Information to:

### any of its directors, officers and employees who are directly connected with the Business Purpose and who need to know the Confidential Information, provided that the Recipient procures that each such person to whom the Confidential Information is disclosed is bound by obligations of confidentiality no less onerous than those set out in this Agreement and the Recipient shall be responsible for any breach of the obligations contained in this Agreement by any such person as if it were the Recipient’s own breach; and

### any other person to whom disclosure is required to be made by virtue of any applicable law or regulation or order of a court of competent jurisdiction, provided that the Recipient shall only make the minimum disclosure permitted by the applicable law or regulation and shall, to the extent legally permitted, notify Wellcome of the proposed disclosure under this Clause 3.2.2.

# Return or destruction of Confidential Information

## At Wellcome’s request, and in any event upon the completion of the Business Purpose, the Recipient must:

### promptly destroy or return to Wellcome all materials containing or embodying the Confidential Information supplied by Wellcome; and

### erase all Confidential Information from its computer systems or which is stored in electronic form (to the extent possible).

### and shall certify in writing within ten (10) Business Days of such request or completion of the Business Purpose, that it has fully complied with its obligations under this Clause 4.

## Subject to clause 4.1, the Recipient may retain such Confidential Information as is required to be retained pursuant to any applicable law or regulation.

# Reservation of Rights

## Wellcome makes no express or implied warranty or representation concerning its Confidential Information, or the accuracy or completeness of the Confidential Information.

## No rights, including, but not limited to, intellectual property rights, in respect of the Confidential Information are granted to the Recipient and no obligations are imposed on Wellcome other than those expressly stated in this Agreement.

## The Recipient acknowledges that damages alone may not be an adequate remedy for any breach by the Recipient of its obligations under this Agreement and, accordingly, without prejudice to any and all other rights or remedies that Wellcome might have, Wellcome shall be entitled to seek the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach of the provisions of this Agreement.

## Subject to a Party’s obligations under this Agreement, nothing in this Agreement shall prohibit a Party from approaching, discussing or negotiating and entering into any other transaction (including transactions that are similar to the Business Purpose) with any third party including third parties who are in any way a competitor to the other Party.

# Termination

## If either Party decides no longer to be involved with the Business Purpose, it shall notify the other Party in writing giving Five (5) Business Days’ notice.

## The obligations of each Party shall, regardless of any earlier termination of negotiations or discussions between the Parties in relation to the Business Purpose, continue for a period of two (2) years from the end of the Term.

## Neither the termination of this Agreement for any reason, nor the completion or the abandonment of the Business Purpose shall affect the Recipient’s obligations or Wellcome’s rights under this Agreement.

# General

## No failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

## No term of this Agreement may be enforced by a third party solely by virtue of the Contracts (Rights of Third Parties) Act 1999.

## This Agreement may be executed in two counterparts, each of which when executed and delivered shall constitute a duplicate original, but both the counterparts shall together constitute one agreement. Neither counterpart shall be effective until each Party has executed and delivered at least one counterpart.

## The Recipient may not assign, sub-contract or deal in any way with, any of its obligations under this Agreement, unless it is expressly permitted either by this Agreement or in writing by Wellcome.

# Governing law and jurisdiction

## The validity, performance and construction of this Agreement shall be governed, construed and enforced in accordance with by English Law and the Parties agree to irrevocably submit to the exclusive jurisdiction of the English Courts.

This Agreement has been entered into on the date stated at the beginning of it.

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| **SIGNED** by ………………………………………for and on behalf of**THE WELLCOME TRUST LIMITED****(as trustee of the Wellcome Trust)****Name:****Date:** |  |
|  |  |
| **SIGNED** by ………………………………………for and on behalf of **[FULL COMPANY NAME]****Name**:**Date:** |  |